erty exists [13]—where a person is compelled to acquiesce in an illegal demand in order to protect his property. For this it seems sufficient if the will be constrained by the unlawful presentation of the choice between two comparative evils; as inconvenience of property, loss of property altogether or compliance with an unconscionable demand.[14]

APPLICATION OF THE SEVENTH AMENDMENT TO ACTIONS BROUGHT IN THE STATE COURTS UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT.—It is obvious from the wording of the amendment itself that the jury trial contemplated by the Seventh Amendment, [1] to the Constitution of the United States is the same kind of jury trial as was necessary at common law, by a jury composed of twelve men of whom an unanimous verdict is required. And as a general proposition it is well settled that this amendment is a limitation only on the administration of law in the federal courts.[2] As was said by Waite, C. J., in the case of *Walker* v. *Sauvinet*,[3] "this Seventh Amendment, as has many times been decided, relates only to trials in the courts of the United States * * * The states so far as this amendment is concerned, are left to regulate trials in their courts in their own way."

These two principles have been clearly brought out in numerous cases which have held that a state statute providing for a jury trial of less than twelve or allowing a verdict other than unanimous is not contrary to the federal Constitution.[4] And the proposition gives no trouble at all when applied to the enforcement of common law rights or rights created by state statute in state courts.

But a comparatively new and somewhat different aspect of the question arose in the recent case of the *Chesapeake & Ohio Ry. Co.* v. *Carnahan* (Va.), 86 S. E. 863, which is interesting more because of the novelty of the question involved than because of any difficulty of solution. In this case an action was brought by an injured employee against the Chesapeake & Ohio Ry. Co., under the Federal Employer's Liability Act in a state court of Virginia. The

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[13] It has been sought to draw a distinction between duress of real property and duress of personal property but this is not maintainable either upon principle or authority. Joannin *v.* Ogilvie, *supra;* First National Bank *v.* Sargeant, *supra.*

[14] Lonergan *v.* Buford, 148 U. S. 581; Harris *v.* Carey, 112 Va. 362, 71 S. E. 551.

[1] The Seventh Amendment provides: "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law."

[2] Brown *v.* New Jersey, 175 U. S. 172; Walker *v.* Sauvinet, 92 U. S. 90; Edwards *v.* Elliott, 21 Wall. 532. See Maxwell *v.* Dow, 176 U. S. 581, 598.

[3] 92 U. S. 90, 92.

[4] Brown *v.* New Jersey, *supra;* Franklin *v.* St. Louis & M. R. R. Co., 188 Mo. 533, 87 S. W. 930; Taussig *v.* St. Louis & K. R. R. Co., 186 Mo. 269, 85 S. W. 378.

Virginia Code (1904) § 3166, provides for a civil jury of seven instead of twelve. The question was raised by the attorney for the railroad as to whether or not this action arising under a federal statute could be tried by a jury of seven, inasmuch as the Seventh Amendment of the United States Constitution provides in effect that the right of trial by jury shall be preserved as it was at common law. The court, however, held that the action could be tried by a jury of seven in accordance with the state law.

As we have seen, the well settled rule is that the Seventh Amendment applies only to actions in the federal courts and the question raised by this case is simply whether or not an exception to this general rule is created when the action is brought under a federal statute, but in a state court. The few cases which have been decided on this point hold that the general rule applies and that the state law should control as to the procedure and mode of trial.[5] These cases are undoubtedly sound but the reasoning on which they are based is somewhat confused.

Section 6 of the Federal Employers' Liability Act (as amended in 1910) provides that the state courts shall have concurrent jurisdiction with the federal courts and that no action under the act brought in the state court can be removed to the federal court.[6]

It is argued by those who advance the proposition that a state court has no power to try an action brought under this act by a jury of less than twelve, that, because if the Seventh Amendment, Congress did not have the right to confer on state courts jurisdiction of actions arising under the act, where the particular state does not require an unanimous verdict of twelve men. But it is held on strong authority that the express provision in this act referring to concurrent jurisdiction of the state and federal courts does not confer any jurisdiction on the state courts but merely recognizes the jurisdiction which already existed.[7] In fact it is a well established principle that state courts may as a matter of right take jurisdiction to enforce civil rights and liabilities arising under the legislation of Congress unless there is something in that legislation

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[5] Gibson *v.* Bellingham & N. R. R. Co., 213 Fed. 488; Winters *v.* Minneapolis & St. L. R. R. Co., 126 Minn. 260, 148 N. W. 106; Louisville & N. R. R. Co. *v.* Stewart's Adm'r., 163 Ky. 823, 174 S. W. 744; Louisville & N. R. R. Co. *v.* Johnson's Admr., 161 Ky. 824, 171 S. W. 847; Chesapeake & O. R. R. Co. *v.* Kelly's Adm'x., 161 Ky. 655, 171 S. W. 185.

[6] Section 6 of the Act, as amended in 1910, provides that: "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the action arose, or in which the defendant may be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with the courts of the several states, and no cases arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

[7] Mondou *v.* New York, N. H. & H. R. R. Co., 223 U. S. 1, 38 L. R. A. (N. S.) 44. See also, Chesapeake & O. R. R. Co. *v.* Kelly's Adm'x., *supra*. See also, 3 VA. LAW REV. 242.

forbidding the state courts to take jurisdiction to enforce the rights and liabilities created by it. An important case which is often quoted in support of this principle is that of *Claffin* v. *Houseman*,[8] where it was said by Justice Bradley: "Rights, whether legal or equitable, acquired under the laws of the United States may be prosecuted in the United States courts or in the state courts competent to decide rights of like character and class; subject, however to this qualification, that where a right arises under a law of the United States, Congress may if it see fit give to the federal courts exclusive jurisdiction."

The fact that the Federal Employers' Liability Act did not involve any attempt on the part of Congress to enlarge or regulate the jurisdiction of the state courts and that the rights created by the act should be enforced as a matter of right in the state courts is further emphasized by the Supreme Court of the United States in the case of *Mondou* v. *New York, New Haven & Hartford Railway Co.*,[9] where it reviews the action of the state court of Connecticut in refusing to enforce the act.

It therefore appears that the state courts have jurisdiction, as a matter of right, without its being expressly conferred, to enforce civil rights and remedies created by Congressional legislation, unless the right is expressly denied by the legislation in question. With this proposition in mind it is difficult to see from what source authority can be derived to support the argument that, when the state court is enforcing one of these rights created by federal legislation, the state court procedure as regards juries, must conform to the restrictions which the United States Constitution has placed on the practice in the federal courts unless it is so provided in the particular legislation which creates the right.

As was stated above, the Seventh Amendment applies only to the federal courts and a state may constitute its courts for the enforcement of rights and remedies as it sees fit and so long as it does not infringe the "due process of law" clause of the Fourteenth Amendment it violates no provision of the federal Constitution. Nor is a trial under a state statute changing the number of jurors or dispensing with the feature of unanimity a denial of "due process of law" within the inhibition of the Fourteenth Amendment.[10]

Inasmuch as there is no reference in the Federal Employers' Liability Act itself, to the procedure to be followed when the action is brought in the state court, it has several times been held that an action may be legally and properly tried in a state court where a state law provides for a civil jury of less than twelve or does not require an unanimous verdict.[11] Although the cause of

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[8] 93 U. S. 130, 136.

[9] *Supra.*

[10] Maxwell *v.* Dow, *supra;* Walker *v.* Sauvinet, *supra.*

[11] Gibson *v.* Bellingham & N. R. R. Co., *supra;* Winters *v.* Minneapolis & St. L. R. R. Co., *supra;* Louisville & N. R. R. Co. *v.* Stewart's Adm'r., *supra;* Louisville & N. R. R. Co. *v.* Johnson's Adm'r., *supra;* Chesapeake & O. R. R. Co. *v.* Kelly's Adm'x., *supra.*

action arises in an Act of Congress it is not necessarily entitled to a jury such as is contemplated by the federal Constitution. It was said by Dibell, C., in the case of *Winters* v. *Minneapolis and St. L. R. R. Co.*,[12] with reference to an action under the act in a state court: "The state court had jurisdiction. The law of the forum as to what constitutes a lawful jury, applies. The character of the cause of action does not determine it. The five-sixths jury law is authorized by the state constitution and is not prohibited to the state by the federal Constitution."

In fact there is no authority at all which would lead one to believe that the Seventh Amendment, by way of exception to the general rule should apply to state courts when enforcing an action under legislation of Congress, and the decision in the principal case seems eminently proper.

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[12] 126 Minn. 260, 148 N. W. 106, 107.